



Agricultural Marketing Service

7 CFR Part 1220

[Document No. AMS-LP-20-0085]

Soybean Promotion and Research: Adjusting Representation on the United Soybean Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts the number of members on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the Board was last reapportioned in 2018. As required by the Soybean Promotion, Research, and Consumer Information Act (Act), membership on the Board is reviewed every 3 years and adjustments are made accordingly. This change results in a decrease in Board membership for one State (Alabama), decreasing the total number of Board members from 78 to 77. These changes are reflected in the Soybean Promotion and Research Order (Order) and will be effective with the Secretary of Agriculture's (Secretary) appointments for terms in the year 2022. This final rule also corrects the number of States and units to the Order. Technical corrections to the regulations adjust the number of States and units from 30 to 31.

DATES: This rule is effective as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Sarah Aswegan, (515) 201-5190; Sarah.Aswegan@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and

benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule does not meet the definition of a significant regulatory action contained in section 3(f) of E.O. 12866 and therefore, the Office of Management and Budget (OMB) has waived review of this action.

Executive Order 12988

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

Section 11 of the Act (7 U.S.C. 2910) provides that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion organized and operated under the laws of the U.S. or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 13175

This proposed rule has been reviewed under E.O. 13175 – Consultation and Coordination with Indian Tribal Governments. E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on: (1) policies that have tribal implication, including regulation, legislative comments, or proposed legislation; and (2) other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

AMS has assessed the impact of this proposed rule on Indian tribes and determined that this rule would not have tribal implications that require consultation

under E.O. 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the proposed regulation has been shared during a quarterly call, and tribal leaders were informed about the proposed regulation and the opportunity to submit comments. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the regulations.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements contained in the Order and accompanying Rules and Regulations have previously been approved by OMB and were assigned OMB control number 0581-0093.

Background

The Board was initially appointed on July 11, 1991, pursuant to the provisions of the Act (7 U.S.C. 6301-6311), and the Order (7 CFR Part 1220) issued thereunder. The Order established an initial Board with 60 members, composed of soybean producers. For purposes of establishing the Board, the United States was divided into 31 States and geographical units. Representation on the Board from each unit was determined by the level of production in each unit.

Reapportionment

Section 1220.201(c) of the Order provides that at the end of each 3-year period, the Board shall review soybean production levels in the geographic units throughout the United States. Section 1220.130 of the Order defines a unit as each State, or group of States, which is represented on the Board. The Board may recommend to the Secretary modification in the levels of production necessary for Board membership for each unit.

Section 1220.201(d) of the Order provides that at the end of each 3-year period,

the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3 million bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3 million bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3 million bushels, but fewer than 15 million bushels shall be entitled to one board member; (3) units with 15 million bushels or more but fewer than 70 million bushels shall be entitled to two Board members; (4) units with 70 million bushels or more but fewer than 200 million bushels shall be entitled to three Board members; and (5) units with 200 million bushels or more shall be entitled to four Board members.

The Board was last reapportioned in 2018. The total Board membership increased from 73 to 78 members, with Alabama, Kentucky, North Dakota, South Dakota, and Tennessee each gaining one additional member. The final rule was published in the *Federal Register* (83 FR 53365) on October 23, 2018. This change was effective with the 2019 appointments.

This final rule decreases total membership on the Board from 78 to 77, without affecting the overall number of states and regions. Thus, this change will not affect the number of geographical units.

This final rule adjusts representation on the Board as follows:

State	Current Representation	Final Representation
Alabama	2	1

Board adjustments by this rulemaking will take effect with the Secretary's 2022 appointment process.

This final rule also corrects the number of States and units to the Order. During a

previous reapportionment, the final rule did not account for the change in the number of States and units, as New Jersey production levels met the threshold to separate from the Eastern Region. Due to that oversight, AMS is making the correction. Technical corrections to the regulations adjust the number of States and units from 30 to 31.

Summary of Comments

A proposed rule was published in the *Federal Register* (86 FR 19788) on April 15, 2021, with a 60-day comment period. USDA received 10 comments. The comments communicated displeasure for Alabama's decreased number from two seats to one seat. The commenters contend that due to Alabama's lower production levels, compared to the Midwest, the producers do not have as much of a voice for their state and region. Given the Southeast's different climate, soil, and production factors, the commenters feel a second seat would give them stronger representation to help with issues that are specific to Alabama and the Southeast. Leaving the Alabama seat at two would not be consistent with the Act and Order, which requires that at the end of each 3-year period, the Secretary review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the formula to determine the number of directors for each unit set forth in § 1220.201(e). This was done by calculating production data for years 2015-2019 (excluding the crops in years in which production was the highest and in which production was the lowest in each State) as reported by the USDA NASS, resulting in a 3-year average for Alabama that fell below the required amount of bushels to retain two seats under the Order (§ 1220.201(e)(2)). Accordingly, no change is made as a result of these comments.

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS considered the economic effect of this action on small entities and determined that this final rule would not have a significant economic impact on a

substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

Effective November 20, 2019, the Small Business Administration (SBA) [13 CFR 121.201] published an interim final rule (84 FR 64013) that adjusts the monetary-based size standards for inflation. As a result of this rule, the size classification for soybean producers changed from sales of \$750,000 or less to sales of \$1,000,000 or less. There are an estimated 515,008 soybean producers and an estimated 10,000 first purchasers who collect the assessment, most of whom would be considered small businesses under the criteria established by SBA.

According to USDA's NASS 2017 Census of Agriculture, the number of operations in the United States with soybean production totaled 303,191.¹ The most recent (2017) Census of Agriculture data show that roughly 2 percent of producers with soybean production, or 35,852 operations, have annual receipts of \$1,000,000 or more.²

The final rule imposes no new burden on the industry, as it only adjusts representation on the Board to reflect changes in soybean production. This adjustment is required by the Order and results in a decrease in Board membership from 78 to 77.

AMS is committed to complying with E-Government Act of 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research,

¹ <https://www.nass.usda.gov/AgCensus/index.php>

² <https://quickstats.nass.usda.gov/results/A2ADD567-7CE0-3063-9BAD-CB6C0D073DDA>

Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 1220 is amended as follows:

**PART 1220--SOYBEAN PROMOTION, RESEARCH, AND CONSUMER
INFORMATION**

1. The authority citation for part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301-6311 and 7 U.S.C. 7401.

2. In § 1220.201, revise paragraph (a) to read as follows:

§ 1220.201 Membership of board.

(a) For the purpose of nominating and appointing producers to the Board, the United States shall be divided into 31 geographic units and the number of Board members from each unit, subject to paragraphs (d) and (e) of this section shall be as follows:

Table 1 to Paragraph (a)

State/Unit	No. of Members
South Dakota	4
Ohio	4
North Dakota	4
Nebraska	4
Missouri	4
Minnesota	4
Iowa	4
Indiana	4
Illinois	4
Wisconsin	3
Tennessee	3
Mississippi	3
Michigan	3
Kentucky	3
Kansas	3
Arkansas	3
Virginia	2
Pennsylvania	2
North Carolina	2
Maryland	2
Louisiana	2
Alabama	1

Texas.	1
South Carolina	1
Oklahoma	1
New York	1
New Jersey.	1
Georgia.	1
Delaware	1
Unit	No. of Members
Eastern Region (Connecticut, Florida, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, West Virginia, District of Columbia, and Puerto Rico).	1
Western Region (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming) . . .	1

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Erin Morris, Associate Administrator,
Agricultural Marketing Service.